IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 2ND MARCH 2007 / 11TH PHALGUNA 1928

OP.No. 13524 of 2003(I)

PETITIONER:

M.C.ABRAHAM S/O. CHACKO, AGED 52 YEARS,
MAMPARAMBIL VEEDU, VELLOOR P.O., KOTTAYAM.

BY ADV. SRI.A.X.VARGHESE

RESPONDENTS:
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1. REGISTRAR, CO-OPERATIVFE SOCIETIES,
THIRUVANANTHAPURAM

2. DISTRICT CO-OPERATIVE BANK, KOTTAYAM,
REPRESENTED BY ITS SECRETARY.

3. SECRETARY, DISTRICT CO-OPERATIVE BANK,
KOTTAYAM, PAMPADY BRANCH.

4. SPECIAL SALE OFFICER,
KOTTAYAM DISTRICT CO-OPERATIVE BANK, KOTTAYAM.

BY GOVERNMENT PLEADER SMT. REMANI

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 02/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C MP22777 OF 2003 & 23500 OF 2003 IN OP 13524 OF 2003

DISMISSED

2.3.2007 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 PHOTOCOPY OF THE JUDGMENT IN OP NO. 14605 OF 2000 OF THIS HON'BLE HIGH COURT OF KERALA DATED 25.5.2000

EXT.P2 PHOTOCOPY OF THE ORDER DATED 29.7.2000 BEARING NO. CB(3)21931/2000 ISSUED BY THE FIRST RESPONDENT.

EXT.P3 PHOTOCOPY OF THE ORDER BEARING NO. 7046/00-01 ISSUED BY THE 2ND RESPONDENT.

EXT.P4 PHOTOCOPY OF THE AUCTION NOTICE ISSUED BY THE 4TH RESPONDENT.

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

O.P. NO. 13524 OF 2003

Dated this the 2nd day of March, 2007

JUDGMENT

Petitioner along with his mother mortgaged the property belonging to his mother. However, petitioner's mother died after availing the loan, but before clearing the debt. Thereafter the society requested the petitioner's brother to execute a release deed in favour of the society. According to the petitioner, when petitioner wanted to sell some other property, society raised objection and against that, this W.P. is filed. I do not think the society will have any objection if petitioner does not want to sell the mortgaged property because even after death of the owner, charge on the property stands and the society is free to attach and sell the property irrespective of whether it is held by the petitioner or any other legal heir. However, if the petitioner continues to be a debtor and the secured property is inadequate to meet liability, then sale of any property by the petitioner without discharging the liability due to the Bank may be hit by Section 53 of the TP Act. In the circumstances, O.P. is disposed of leaving freedom to the petitioner to

sell properties after clearing the Bank's dues and after getting the attachment, if any, lifted in respect of the properties.

(C.N.RAMACHANDRAN NAIR)
Judge